



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Van Dyn Hoven Imports, LLC

Case No.: TR-12-0017

FINAL DECISION

On January 31, 2012, Steven and Renee Krubsack filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Van Dyn Hoven Imports, LLC. On May 2, 2012, the Department forwarded the claim along with documents gathered by the Department during its investigation of the claim to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination on these claims on June 29, 2012. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Gerald Van Dyn Hoven
Van Dyn Hoven, LLC
100 Wolf River Drive
Fremont, WI 54940

Steven and Renee Krubsack
E8980 West 1st Street
Clintonville, WI 54929

Community First Credit Union
2626 South Oneida Street
P.O. Box 1487
Appleton, WI 54912

FINDINGS OF FACT

1. Van Dyn Hoven Imports, LLC, is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. Gerald Van Dyn Hoven was the owner of Van Dyn Hoven Imports, LLC, (the Dealer). The Dealer's facilities were located at 3939 West College Avenue, Appleton, Wisconsin 54914. The Dealer went out of business effective April 6, 2009.
2. The Dealer had an Irrevocable Letter of Credit (ILOC) satisfying the requirements of Wis. Stat. § 218.0114(5) in force with a beginning date of December 31, 2007, and an ending date of December 31, 2009. (Community First Credit Union ILOC# 914112). On December 18, 2009, the Department received a notice of cancellation of the ILOC. The cancellation was effective December 31, 2009.
3. On December 20, 2008, Steven and Renee Krubsack (the Krubsacks) purchased a 2008 Hyundai Santa Fe automobile, vehicle identification number 5NMSH73E28H221189, from the Dealer. The Krubsacks also purchased an extended warranty covering the vehicle through the Dealer. The extended warranty purchased by the Krubsacks was administered by Warrantech Automotive, Inc., (Warrantech). The extended warranty covered the vehicle for ten years or 100,000 miles and cost \$1,999.00.
4. On November 5, 2011, the Krubsacks traded-in the Hyundai Santa Fe as part of the purchase of a new vehicle from a different motor vehicle dealer. By letter dated November 16, 2011, the Krubsacks notified Warrantech that they no longer owned the Hyundai Santa Fe and wished to cancel the warranty. The Krubsacks requested a refund of the unused portion of the premium for the extended warranty. According to the formula set forth in the warranty contract the Krubsacks were entitled to a refund of \$1107.51.
5. Warrantech advised the Krubsacks that it was a third party administrator of the extended warranty and, as such, only received a portion of the premium. Based on the percentage of the premium it received, Warrantech agreed to refund \$463.95 to the Krubsacks. The remainder of the premium was retained by the Dealer and the Krubsacks were told to seek the remainder of the refund from the Dealer. The Krubsacks attempted to contact Gerald Van Dyn Hoven about the refund but were unsuccessful.
6. On December 5, 2011, the Krubsacks filed a complaint with the Department against the Dealer. The investigator from the Department contacted Gerald Van Dyn Hoven on behalf of the Krubsacks. Mr. Van Dyn Hoven refused to refund the remainder of the Krubsacks' premium to them.
7. On January 31, 2012, the Krubsacks filed a claim against the ILOC of the Dealer in the amount of \$618.56, the remainder of the refund due for the unused portion of the extended warranty.

8. The Krubsacks' claim was discovered when they attempted to obtain a refund of the portion of the unused portion of the premium for the extended warranty retained by the Dealer. However, the claim arose when the Dealer closed his business and did not make any provisions to set aside the unearned premium paid by the Krubsacks in a manner that would have provided to them the services that they paid for under the extended warranty contract. Accordingly, the claim arose on or before April 6, 2009. The claim arose during the period covered by the ILOC.

9. The Dealer's refusal to refund the unused portion of the premium for the extended warranty retained by the Dealer constitutes a violation of Wis. Stat. § 218.0116(1)(c) (willfully defrauding a retail buyer). The loss sustained by the Krubsacks was caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license.

10. The Krubsacks submitted documentation to support a bond claim of \$618.56. The bond claim was filed within three years of the ending date of time period covered by the ILOC issued by Community First Credit Union was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. *[recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)].*

. . .

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the Krubsacks' claim filed against the ILOC of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. As found above, the Dealer's refusal to refund to the Krubsacks the unused portion of their premium for the extended warranty retained by the Dealer constitutes a violation of Wis. Stat. § 218.0116(1)(c). Wis. Stat. § 218.0116(1)(c) is identified in Wis. Admin. Code § Trans 140.21(1)(c)1. The Krubsacks sustained a loss as a result of this violation.

CONCLUSIONS OF LAW

1. The claim of Steven and Renee Krubsack arose on the day the Dealer closed his business and did not make any provisions to set aside the unearned premium paid by the Krubsacks in a manner that would have provided to them the services that they paid for under the extended warranty contract. Accordingly, the claim arose on or before April 6, 2009, the date the Dealer closed his business. The ILOC issued to the Dealer by Community First Credit Union covers a period from December 31, 2007 until December 31, 2009. The claim arose during the period covered by the ILOC.

2. Steven and Renee Krubsack filed a claim against the motor vehicle dealer bond of the Dealer on January 31, 2012. The bond claim was filed within three years of the last day of the period covered by the ILOC. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Steven and Renee Krubsack sustained a loss as the result of an act of the Dealer that would be grounds for suspension or revocation of the Dealer's motor vehicle dealer license. The Krubsacks have submitted documentation to support a claim in the amount of \$618.56.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Steven and Renee Krubsack against the Irrevocable Letter of Credit issued to Van Dyn Hoven Imports, LLC, is APPROVED in the amount of \$618.56. Community First Credit Union shall pay the Krubsacks this amount for their loss attributable to the actions of the Dealer.

Dated at Madison, Wisconsin on August 9, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Mark F. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
4802 Sheboygan Avenue, Room 115B
Wisconsin Department of Transportation
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.